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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,428	07/09/2001	Craig M. Whitehouse	840.052.203	8546
4617 7590 01/23/2008 LEVISOHN, BERGER, LLP 61 BROADWAY, 32ND FLOOR NEW YORK, NY 10022				
			EXAMINER NGUYEN, KIET TUAN	
			ART UNIT 2881	PAPER NUMBER
			MAIL DATE 01/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Supplemental
Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/901,428

Applicant(s)

WHITEHOUSE ET AL.

Examiner

Kiet T. Nguyen

Art Unit

2881

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 12-18-2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 99 and 115.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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PTOL-303

The attachment

Applicant's arguments filed on 12-18-2007 have been fully considered but they are not persuasive.

Applicant argued that:

- 1) The granted petition accepting Applicant's claim for priority wherein priority to the continuation applications is properly claimed;
- 2) The claims pending in the application are method claims. As such there are no needed particular feature or device that shows "providing a delay between the release of the pulses of trapped ions and initiation of pulses in the Time-Of-Flight instrument" and "adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio" as recited in claims 99 and 115;
- 3) The timing release of individual packets inherently has a delay between successive individual packets; and
- 4) The limitation "adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio" is supported in the statements "all or a portion of ion packet 52 may fit into the sweet pot of pulsing region 30. Ions pulsed from the sweet pot in pulsing region 30 will impinge on the surface of detector 38".

This argument is not persuasive and is incomplete to responding the features stated in page 2 of the final office action mailed on 10-18-2007. The following are answered for the above-argument:

- 1) The data of original application serial No. 09/676,124 did not indicate "which is a CON of 09/373,337, which is a CON of 08/794,970, which is a CON of 08/645,826,

which is a CON of 08/202,505". Therefore, the data of original application serial No. 09/676,124 may be needed to correct;

2) Claims 99 and 115 recite the method for operating a Time-Of-Flight mass spectrometer for effecting mass analysis on an ion stream. They are not recited the chemical reaction. Therefore, the drawings must show every feature of the invention specified in the claims 99 and 115 such as a delay device and an adjusting delay device;

3) The pulse signal is carried to release individual ion packets. It never had a delay in the pulse signal. Even, if the delay was in the pulse signal, then the delay in the pulse signal is different with the delay recited in claims 99 and 115; and

4) The above-statements do not recite any meaning that is relative to the limitation "adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio". Further, Applicant argued that the delay would be inherently in the timing release of individual packets, between successive individual packets. How is the delay adjusted when the delay is inherently in the timing release of individual packets, between successive individual packets?

It is noted that Applicant is requested to prove the subject matters (all the limitations) recited in claims 99 and 115 are disclosed in each of the current application and all continuation applications (**See MPEP 201.07**).

Conclusion


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiet T. Nguyen whose telephone number is 571-272-2479. The examiner can normally be reached on Monday-Friday 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert H. Kim can be reached on 571-272-2293. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KIET T. NGUYEN
PRIMARY EXAMINER